

REMARKS

1. The Office Action of March 4, 2005 is hereby acknowledged. The shortened statutory period of three (3) months time period for response to this Office Action expired on June 4, 2005. Concurrently with the filing of this Amendment, the Applicant has requested a two-month extension of time and has paid the appropriate fee. Therefore, the deadline for filing the response is August 4, 2005. This Amendment Under 37 C.F.R. § 1.111 is being mailed by Express Mail, Mail Label No. EV 593950605 US, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on August 4, 2005. Therefore, this amendment this Amendment is timely filed. In the event that the Commissioner for Patents should determine that any additional extension of time is required for this Amendment to be timely filed and an appropriate fee is due for that extension of time, then the Commissioner for Patents is hereby authorized to charge Deposit Account Number 18-2222 for such appropriate fee.

2. The original '157 Application had a total of 12 claims wherein 8 were independent claims. Through this amendment no claims have been added or cancelled. The '157 Application now has a total of 12 total claims wherein 8 are independent claims. Therefore, no additional fee is due. In the event that the Commissioner for Patents should determine that any additional fee is due, then the Commissioner for Patents is hereby authorized to charge Deposit Account Number 18-2222 for the appropriate fee.

3. The Applicant will address each of the Examiner's statements as set forth in the Office Action.

3.01 Under the heading "Claim Objections" with respect to Claim 1, that objection has now been made moot because the additional element "n" has been added to Claim 1 and therefore, the semicolon is correct at the end of "m" although additional amendments have been made. With respect to the word "dead" in Claims 1 and 2, the Applicant believes that the Examiner intended to refer to Claims 1 and 3. Since the words "dead sea salt" have had the first

1 letter capitalized in all the other claims, the Applicant has made this change consistent with all
2 the other claims and the words "Dead Sea Salt" all now have the first letter of each word
3 capitalized. Therefore, all of the directives under the heading "Claim Objections" have been
4 addressed.

5
6 3.02 Under the heading Claim Rejections - 35 U.S.C. § 112, the Examiner's
7 statement concerning Claims 9-12 is acknowledged. With respect to Claim elements 9(b), 10(b),
8 11(b) and 12(b), the term "slowly" has been eliminated from each of these claims. Therefore,
9 the ambiguity has been eliminated.

10 3.03 With respect to Claim elements 9(d), 10(d), 11(d) and 12(d), the word
11 "missing" was a typographical error and should have been "mixing". Therefore, the Applicant
12 has corrected this typographical error in these claim elements to change the word "missing" to
13 "mixing". Therefore, this claim objection under 35 U.S.C. § 112 has also been addressed.

14
15 4. Under the heading "Claim Rejections - 35 U.S.C. § 103, the Applicant acknowledges
16 the Examiner's statement that the Examiner believes that the present application is obvious in
17 view of a combination of two published patent applications, the Deckers et al. published
18 application US 2002/0037303 A1 (in view of Stavroff et al. Patent 5,866,145 and the Schwartz
19 Published Patent Application US 2002/0012697 A1). The Applicant has very carefully reviewed
20 all of the Examiner's arguments on Pages 3 and 4 of the Office Action. The Applicant very
21 disrespectfully disagrees with what the Examiner has stated. Specifically, the present inventor
22 has in fact arrived at a new and surprising result for a combination of all of the elements that he
23 has created with great specificity as set forth in the patent text and in the claims. As set forth
24 specifically in the patent text beginning on Page 6, beginning on Line 7 and continuing through
25 Line 14, it states:

26 "It is an object of the present invention to provide an improved facial and body
27 scrub which acts as a salt sorbet in that it creates a blown up foam which will provide
28 deep cleaning action to cleanse skin pores in an efficient manner and also to exfoliate
skin in an efficient manner.

1 It is a further object of the present invention to provide a salt sorbet exfoliating
2 facial and body scrub which although effective for cleaning and exfoliating skin, is not so
3 abrasive as to create any damage to sensitive skin areas, especially on a woman's face."
4

5 This is a new and surprising result because as set forth in the Background portion of the
6 '157 Application which begins on Page 4, Line 27 and continuing to Page 5, Line 3, the patent
7 text states:
8

9 "While exfoliating compounds have already been developed in the prior art, many
10 exfoliating compounds either do not provide a sufficiently deep cleansing action or
11 alternatively, may be sufficiently abrasive to damage sensitive skin, especially on a
12 woman's face. Therefore, there is a significant need for an improved facial and body
13 scrub which can deep clean skin tissue and also exfoliate dead skin cells while at the
14 same time not damaging sensitive skin."
15

16 The combination that the inventor has created as disclosed in detail in the patent text of
17 the '157 Application and provided in the claims provides a new and surprising result of creating
18 the salt sorbet blown up foam which provides a deep cleaning action to cleanse skin pores and
19 exfoliate skin in a manner which will not damage the skin. None of the prior art of which the
20 inventor was aware and certainly none of the art that the Examiner has cited disclose this new
21 and surprising result. The combination of elements provides a synergistic effect which in effect
22 creates the new and surprising result to create the salt sorbet blown up foam. In order to clearly
23 claim this as a part of the novel feature of the present invention, the Applicant has added this
24 limitation in each of the independent claims. Specifically, in each of the combination claims
25 which are Claims 1,3,5 and 7, the Applicant has added a last element which reads "the above
26 combination creating a salt sorbet blown up foam which provides a deep cleaning action to
27 cleanse skin pores and exfoliate skin in a manner which will not damage the skin." With respect
28 to the method claims, this feature has been added in the last element of each of the method
claims which now reads "the method creating a salt sorbet blown up foam which provides a deep

1 cleaning action to cleanse skin pores and exfoliate skin in a manner which will not damage the
2 skin.” Therefore, this key limitation which is a synergistic effect of the combination invented by
3 the inventor has now been added into each of the independent claims. It is respectfully
4 submitted that the cited prior art does not disclose or make obvious this new, novel synergistic
5 effect.

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7 The Applicant will address everything that the Examiner has stated in the order in which
8 the Examiner has stated it.

9 4.01 With respect to the Deckers et al. reference, the Deckers Patent really is
10 concentrating on creating an emulsion which comprises oil bodies. The invention discloses
11 providing a method for preparing the emulsions and the use of the emulsions in various products.
12 However, nowhere does it claim that the emulsion has the effect that is discussed in the present
13 invention and now set forth in each of the independent claims of the invention. Referring to
14 Paragraphs 54 through 60 of the Deckers et al. reference, the patent clearly says that the present
15 invention is a method for preparing an emulsion formulation comprising (1) obtaining oil bodies
16 from plant seeds by a method that comprises: (a) grinding the plant seeds to obtain ground seeds
17 comprising substantially intact oil bodies; (b) removing solids from the ground seeds; and (c)
18 separating the oil body phase from the aqueous phase; (2) washing the oil body phase to yield a
19 washed oil body preparation; and (3) formulating the washed oil body preparation into an
20 emulsion.”

21 Referring to what the Examiner cites in Column 78, the patent recites a laundry
22 list of various products that are prepared from plant seeds which include the items discussed by
23 the Examiner. Further, in Item 79, it further lists sources of preparation from the plant seeds.
24 Nowhere does the patent say how these plant seeds are used, nor provide the order nor the
25 percentages of the present invention to create the new and synergistic result of the present
26 invention. Even in areas where the patent text talks about personal care dermatological progress,
27 they have a laundry list of different types of elements they talk about but nowhere do they ever
28 imply the combination that is set forth in the present invention or the purposes that the present
invention creates and further, nowhere do they show that the unique combination of elements as

1 set forth in the present invention provide the unique and surprising result of creating the salt
2 sorbet blown up foam to achieve the results as discussed above. Further, as admitted by the
3 Examiner, Deckers et al. never talks about Dead Sea Salt or Silica in the composition.
4

5 4.02 The Stavroff et al. Patent talks about creating a skin treatment process by
6 rubbing onto the skin a body polisher lotion comprising a mixture of sodium chloride salt and oil
7 emollient, the salt being a gritty solid component in suspension in the oil emollient so that the
8 lotion is a two phase lotion which feels gritty to the touch and which exfoliates and moisturizes
9 the skin when the lotion is rubbed onto the skin. Clearly, this one of the types of prior art
10 products that the present invention referred to in that it frequently may damage the skin. This is
11 not acceptable, especially when dealing with skin on a woman's face. Accordingly, once again,
12 nowhere does the Stavroff et al. Patent talk about the combination of elements combined in the
13 way that the Applicant has created it in order to create the new and surprising salt sorbet blown
14 up foam.

15 4.03 The Schwartz Published Patent Application talks about the tissue cleansing
16 and moisturizing composition. The concept is to use the Dead Sea Salts to minimize itching of
17 the skin. Specifically, Schwartz teaches a skin composition comprising a mineral salt emulsified
18 and dispersed in water, a mineral salt, preferably being a composition of Dead Sea salt, having as
19 active ingredients Magnesium Chloride, Potassium Chloride, Sodium Chloride and water of
20 crystallization and a lipid soluble compound and oils, the composition having components
21 present in sufficient quantities to effectively protect the skin tissue against a condition of
22 itchiness on living tissue.

23 Clearly, the Schwartz Patent Application has nothing whatsoever to do with
24 creating an exfoliating agent and most importantly, in no way teaches the combination of
25 elements to create the unique discovered salt sorbet blown up foam.

26 It is respectfully submitted that the Examiner is simply incorrect where he say
27 anyone would combine the three references to arrive at the present invention. Even a
28 combination of all three references of Deckers, Stavroff and Schwartz do not show the unique
combination of elements or the method of creating them and of the surprising and unique result

1 of achieving the salt sorbet blown up foam. Therefore, the Examiner's statement on the bottom
2 of Page 3 of the Office Action that "Based on the disclosure by these references that these
3 substances are used in compositions for benefitting the skin, an artisan of ordinary skill would
4 have a reasonable expectation that a combination of the substances would also be useful in
5 creating compositions for benefitting the skin, i.e. facial and body scrubs" is simply unsupported.
6 Nowhere in any of these prior art references do they talk about creating the unique salt sorbet
7 blown up foam, nor is it ever implied, nor would it be obvious to any skilled artisan. It if would
8 have been obvious, then why hasn't it been created after all these years? Clearly, the cosmetics
9 industry has been around for over 100 years and in fact, cosmetics for women have been in
10 existence for centuries. Clearly, the unique combination to achieve the unique result of the
11 present invention has not been made and since it has not been made, it is extremely unfair to say
12 that it would be obvious for some skilled artisan to combine it. If it were so obvious, it would
13 have been done before. Clearly, it is simply not obvious.

14
15 The Examiner further states beginning on the first full paragraph on Page 4 that
16 "The references also do not specifically teach the ingredients in the amounts claimed by
17 Applicant. The amount of a specific ingredient in a composition is clearly a result effective
18 parameter that a person of ordinary skill in the art would routinely optimize. Optimization of
19 parameters is a routine practice that would be obvious for a person of ordinary skill in the art to
20 employ. It would have been customary for an artisan of ordinary skill to determine the optimal
21 amount of each ingredient in order to best achieve the desired results. Thus, absent some
22 demonstration of unexpected results from the claimed parameters, this optimization of ingredient
23 amount would have been obvious at the time of Applicant's invention." It is respectfully
24 submitted that a new and surprising result has been achieved in the creation of the salt sorbet
25 blown up foam. This has not been disclosed or discussed in any of the cited references, nor to
26 the best of the inventor's knowledge, anywhere else. It is the unique invention created by the
27 inventor. Therefore, to argue that it would simply be an optimization effect is simply incorrect.
28 This is an invention that has been created after painstaking labor on the part of the inventor to
arrive at the unique formulations and the method of creating those formulations as discussed in

1 the '157 Application. Therefore, it is respectfully submitted that the Examiner is incorrect and
2 that the present invention creates a synergistic result and a new and surprising result and is not
3 merely an optimization of known ingredients.
4

5 Referring to the second full paragraph on Page 4 of the Office Action, the
6 Examiner states "The references also do not specifically teach the order of combining the
7 ingredients claimed by Applicant. The order of combining ingredients in a composition is
8 clearly a result effective parameter that a person of ordinary skill in the art would routinely
9 optimize. Optimization of parameters is a routine practice that would be obvious for a person of
10 ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill
11 to determine the order of combining the ingredients to best achieve the desired results." Once
12 again, the Applicant very respectfully disagrees with the Examiner. The order in which the
13 invention is set forth in the method claims is the process that the Applicant has created in order
14 to achieve the new and surprising result and the synergistic effect of combining the elements to
15 achieve the result of the salt sorbet blown up foam. This is not something that is merely an
16 optimization, but is in fact something that has been discovered by the inventor through
17 painstaking efforts of trial and error and discovery as well as using the inventor's many years of
18 experience in this industry to arrive at the new and unique combination and the new and unique
19 method of formulating the combination. Therefore, it is respectfully submitted that this is not an
20 optimization of results.

21
22 5. The uniqueness of the present '157 invention is supported by fundamental Supreme
23 Court cases such as Great Atlantic and Pacific Tea Co. v. Supermarket Eq. Corp., 340 U.S. 147,
24 150-51, 87 USPQ 303 (1950) which held that a new and surprising result would merit a
25 patentable invention. The inventor of the invention in the present '157 Application has created a
26 new and surprising result and a synergistic effect of arriving at a combination of elements when
27 combined with the percentages and also specific parameters as set forth in Independent Claims 1,
28 3, 5 and 7 and when prepared in the method as set forth in detail in Independent Claims 9, 10, 11
and 12 create the new and surprising result of a salt sorbet blown up foam to achieve the result of

1 a foam which creates a deep cleansing action to cleanse the skin pores and exfoliate the skin in a
2 manner which does not damage the skin. It is respectfully submitted that this is not obvious and
3 is a new and unique creation of the present inventor.
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5
6 6. Therefore, it is respectfully submitted that the present invention with the claims as
7 now amended is in condition for allowance and issuance of a Notice of Allowance is respectfully
8 solicited.

9 Respectfully submitted,

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